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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/689,591

10/22/2003

Sundari Pokta

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05/27/2009

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EXAMINER

CUMARASEGARAN, VERN

ART UNIT

PAPER NUMBER

3629

MAIL DATE

DELIVERY MODE

05/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/689,591

Applicant(s)

POKTA, SUNDARI

Examiner

VERN CUMARASEGARAN

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter and fail the machine-or-transformation test.

The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies U.S.C. 101 either by showing that his claim is tied to a particular machine, or by showing that this claim transforms an article. See *Benson*, 409 U.S. at 70. Certain considerations are applicable to analysis under either branch. First, as illustrated by *Benson*, the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent eligibility. See *Benson*, 409 U.S. at 71-72. Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra solution activity. See *Flook*, 437 U.S. at 590.

The steps recited in the claim 1 are not expressly tied to a machine and can be performed by a human being.

The applicable test to determine whether a claim is drawn to a patent eligible process under 101 is the machine-or-transformation test set forth by the Supreme Court, and Applicant's claim here plainly fails that test.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Justice (2001/0049630).

As to claim 1, Justice shows setting up a system server and running a system program on the server (paragraph 19);

installing and running a client program on said user's network access device (paragraph 20);

recording data of usage of said products/services by said user, the data comprising time spent on providers' sites (paragraph 67);

distributing calculated payments to said providers (Fig.1).

Although Justice shows calculating payment distribution to those providers provided products/services to said user over the fixed length billing period (paragraph 23), Justice does not expressly show calculating payment distribution by dividing the fixed user's fee into the respective percentage shares among them generally according to the usage element associated with each provider in relation to the total usage element associated with all providers in the same embodiment. However, Justice does show dividing the user's fee into shares among them generally according to the usage

element associated with each provider in relation to the total usage element associated with all providers in a different embodiment (paragraph 89). It would have been obvious to one of ordinary skill in the art to incorporate both method into one invention since the claimed invention is merely a combination of old elements and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As to claims 2 - 7, Justice shows recording data on network access device if user bypasses the system server (paragraph 67) and recording data on system server if user uses said products/services via the system server (paragraph 78) and payment distribution being calculated by system server and network access device (paragraph 78).

As to claims 8, Justice inherently shows the distributed payments summing up to the user's fee (paragraph 73).

As to claims 9 and 10, the recited formula results in allocating payments based on usage element of use by users for providers. Justice shows operators serving more users receiving higher portion of the fee (paragraph 89).

As to claims 11 and 12, Justice shows integrating the calculated payments in relation to all the users (paragraph 89) and being distributed by system server (paragraph 78).

As to claim 13, Justice shows data consolidated by network access device during a fixed interval (paragraph 78).

As to claim 14, Justice shows transmitting the payment distributions from the network access devices to system server for integration (Fig.1).

As to claim 15-18, examiner takes **official notice** that it is old and well known in the art to transfer data over a predetermined interval following the fixed length billing period. For example, billing information for mobile phone usage is sent to the customer over a predetermined interval such as one month. Therefore, it would have been obvious to one of ordinary skill in the art to incorporate the method of data transfer over a predetermined interval since the claimed invention is merely a combination of old elements and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As to claims 19-21, examiner takes **official notice** that it is old and well known in the art to set a range where shares not falling within the range would initiate a separate action than the shares falling within the range. For example, taxes paid by an individual would be determined based on where in the income range one's income falls. Therefore, it would have been obvious to one of ordinary skill in the art to incorporate the method of setting a range since the claimed invention is merely a combination of old elements and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As to claim 22, Justice shows setting up individual accounts (abstract).

As to claim 23, Justice shows the distribution method set up and operated by operators (paragraph 104).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERN CUMARASEGARAN whose telephone number is (571)270-3273. The examiner can normally be reached on Monday - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. C./
Examiner, Art Unit 3629

/Jonathan Ouellette/

Application/Control Number: 10/689,591

Page 7

Art Unit: 3629

Primary Examiner, Art Unit 3629